usurpation of the jury's function." The first theory, says Mr. Wigmore, leads to the "exaltation of the ordinary rules of evidence, which are the mere instruments of investigation, into an end in themselves." The second fails to recognize that the jury has always acted under the supervision of the court, and leads to the curious result that the appellate court may overturn a decision of the jury as against the weight of the evidence, but may not consider a particular piece of evidence, so as to say that it would not have affected the same weight of evidence.

As to the practical results of the "Exchequer heresy," the writer forcefully shows that "it has done more than any other one rule of law to increase the delay and expense of litigation, to encourage defiant criminality and oppression, and to foster the spirit of litigious gambling." Reform is possible, but not by legislation alone; that has been tried in New York and New Jersey, and has failed. There must be, as in England, a "change in spirit." Particularly, says Mr. Wigmore, must the judges no longer be merely umpires at the game of litigation, mere automata. Likewise the "maudlin sentimentality of judges in criminal cases must cease."

THE FELLOW SERVANT DOCTRINE. — A recent article discusses the various attitudes of the United States Supreme Court on the liability of employers for the negligent injury of servants by fellow servants, and endeavors to expound an ultimate test that may best explain past decisions and guide the future. *The Fellow Servant Doctrine in the United States Supreme Court*, by Albert M. Kales, 2 Mich. L. Rev. 79 (Nov., 1903). The earliest theory, according to this writer, upon which the master's non-liability was rested by this court, was that the "servant assumed the risk of the negligence of his co-employee"; but as he obviously did not assume a risk in every case, this test gave way to one based upon the negligent employee's relation to the plaintiff. This in turn proving inadequate, was succeeded in later cases by the conception that the employer's liability must rest, not on the failure of the employee to assume the risk, but on the breach of a positive legal duty owed by the master. This duty is determined rather by the character of the act in the doing of which the negligence occurred than on the relation of the employees to each other. On this line of thought the court has often declared it to be the "duty of the master to use due care to furnish reasonably safe appliances and a reasonably safe place" in which to work. The writer then endeavors to show that in some cases the court has gone beyond this test in holding the master liable, though it has not expressed the principle on which it proceeded. And so Mr. Kales suggests an ultimate formula, which he considers to be supported by the actual decisions and to accord with the present attitude of the court. This formula requires from the employer due care to provide all permanent conditions of safety — as distinguished from those merely incidentally necessary — for his servants, and so when the negligence of a fellow servant occurs in respect to an act done in discharge of this duty, there is a violation of the master's duty. *Cf.* 16 HARV. L. REV. 593. Mr. Kales' treatment is valuable for its exhaustive and accurate historical analysis of the decisions of the Supreme Court upon the fellow servant doctrine.

SUBSEQUENT BIRTH OF CHILDREN AS A REVOCATION OF A WILL. — Under this title the Virginia Law Register contains, in two numbers, a comprehensive and careful survey, by Mr. Marvin H. Altizer, of the statutes of pretermission which obtain in most American states, and of the cases which interpret these statutes. 9 Va. L. Reg. 473, 519 (Oct. & Nov., 1903). These provisions giving rights to a testator's children born after the will was made are discussed, first, with reference to the circumstances necessary for their operation, and, second, as to their effect. The principal questions arise under the first head, and per-

tain to the interpretation of the variously worded clauses limiting the operation of the statutes to cases where the testator has neither provided for, nor intentionally excluded, the after-born child. The great weight of authority holds any provision, however inadequate, sufficient under these clauses to prevent the operation of the statute, since the purpose of the statute is to protect only such children as are unintentionally omitted. This is very clear when the statute expressly declares that it is not to apply where there is an apparent intention to exclude. But in Pennsylvania, Maine, and Rhode Island, in which states the statutes are not thus expressly limited in application, they are construed as making of no avail an intention to disinherit the after-born child, and as requiring in every case some positively beneficial provision which shall be available to him as a present means of support. This construction the author criticises as not in accord with the purpose of the statutes. As to the evidence of intention to disinherit, which intention the statutes generally require to appear from the will itself, the courts have taken a liberal view, allowing the circumstances surrounding the making of the will to show such intention. Mr. Altizer criticises the Massachusetts doctrine that "parol evidence" is admissible for this purpose. By this, he evidently means merely parol evidence of declarations of intention by the testator. But the wording of the Massachusetts statute — "unless it appears that the omission was intentional" — would seem to justify the practice.

ERRONEOUS DESCRIPTION OF A BENEFICIARY IN A CERTIFICATE OF A BENEFIT SOCIETY. — In most jurisdictions statutes restrict the payment of death benefits of deceased members of benefit societies to particular persons, usually the husband, wife, betrothed, relatives, dependents, and adopted children. Within this list, subject to further restriction, but not to extension, by the by-laws of the society, a member has unlimited power to name his beneficiary. Occasionally, however, a person is erroneously or falsely described in the certificate, so as to appear within the statutory limits. A helpful discussion of typical cases of this sort may be found in a recent article. *Rights of Beneficiaries Erroneously or Falsely Described in Benefit Society Certificates*, by Cyrus J. Wood, 57 Central L. J. 383 (Nov. 13, 1903). The writer shows that courts are inclined to take into consideration the benevolent character and purpose of these societies and, in order to effectuate this purpose, liberally construe their by-laws and the statutes, giving a broad interpretation, for example, to such terms as "relatives," "families," and "dependents." So one improperly described in the certificate as a "relative" may obtain the benefit on proving dependency. This rule was not applied, however, in one case where the beneficiary, named as wife, became dependent by knowingly living with the member as his mistress. If, on the other hand, the beneficiary named cannot be brought within the prescribed limits, those who are within the rules may be awarded the benefit as against both the insured and the society. In short, a misdescription seems to be ignored, and the rights of all concerned are decided according to the benevolent purpose of the society with regard to the real relation of the appointed beneficiary to the deceased.

ACTION FOR INFRINGEMENT OF RIGHT OF PRIVACY BASED UPON BREACH OF TRUST OR CONFIDENCE. *Anon.* 57 Central L. J. 361.

ALLOWANCE FOR COMPULSORY PURCHASE. *Anon.* Discussing with approval the recognized practice of English juries and arbitrators of allowing more than the actual market value. 67 Justice of P. 517.

BURDEN OF PROOF. *Anon.* 67 Justice of P. 529.

CHANGES OF NAME. *Anon.* Discussing English decisions. 116 Law T. 26.

CONVEYANCING AND EQUITY CASES OF THE PAST YEAR. *John Indermaur.* Showing by a selection of cases the development of the law. 25 Law Stud. J. 224.